IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

DONALD GLENNIAL CARPENTER

Debtor(s).

In Proceedings
Under Chapter 7

Case No 01-31912

DONALD GLENNIAL CARPENTER

Plaintiff(s),

V.

Adversary No. 01-3250

FIRST HORIZON HOME LOAN

Defendant(s).

O P I N I O N

The matter before the Court is the Debtor's petition to enforce the terms of a reaffirmation agreement with First Horizon Home Loans ("Horizon"). For the following reasons, the Court finds that Debtor and Horizon fully complied with the requirements of 11 U.S.C. § 524(c) governing reaffirmation agreements and applicable state contract law and holds that the reaffirmation agreement filed with this court on July 16, 2001 is binding on both parties.

I. FACTS

The following facts are largely stipulated and undisputed. On May 23, 2001, the Debtor filed a petition for relief under Chapter 7. Pursuant to § 521(2)(A)-(B) of the Bankruptcy Code, Debtor indicated his intention to reaffirm his debt to Horizon, a debt secured by the Debtor's residence located at 200 Bonds Avenue, East Alton, Illinois. In addition to creating a mortgage on the real estate in question, paragraph 21 of the mortgage contract provided that Horizon was entitled to recover reasonable attorney's fees and costs

in the event of debtor's default.

After being notified of Debtor's intention to reaffirm his debt, counsel for Horizon sent a letter to the Debtor advising him of the amounts due and owing, as well as forwarding a proposed reaffirmation agreement. Although not stipulated by the parties, the reaffirmation agreement tendered by Horizon indicated that the following amounts were due and owing: $3,291.57 in missed mortgage payments, $115.02 in accumulated late charges, and $525.00 in attorney's fees and costs for a total amount due $3,931.59. Debtor's counsel responded by returning the executed reaffirmation agreement to Horizon along with a cashier's check for the total amount requested. The reaffirmation agreement was signed by Horizon's counsel and, on July 16, 2001, the agreement was filed with the Clerk of the Court.

Subsequent to the filing of the agreement, Horizon realized that it had erroneously calculated its attorney's fees and costs and that an additional $1,564.00 was owed. Consequently, Horizon returned the cashier's check and sought to avoid the reaffirmation agreement based on its miscalculation. Debtor has filed the instant complaint seeking to enforce the original reaffirmation agreement executed by the partes.

II DISCUSSION

The issue before the Court is simply whether the Debtor can enforce the reaffirmation agreement entered into with the creditor. Defendant's only alleged basis for avoiding the reaffirmation agreement is its error in calculating the amount owed under the parties' contract. In answering this question, this Court turns to both Federal Bankruptcy law and state contract law.

Reaffirmation agreements are governed by § 524 of the Bankruptcy Code. This section provides a voluntary exception to the "fresh start" that bankruptcy otherwise affords by allowing a debtor to agree to repay all or a portion of an obligation that would otherwise be discharged in bankruptcy. In the Matter of Turner, 156 F.3d 713, 714 (7th Cir. 1998); In the Matter of Duke, 79 F.3d 43, 44 (7th Cir. 1996).

However, in order to protect debtors from compromising their fresh start by entering into potentially unwise agreements with their creditors, § 524 of the Code imposes a number of requirements that must be satisfied before a reaffirmation agreement can be approved by the court. It also includes a number of safeguards which may be employed by the debtor after entering into a reaffirmation agreement. Specifically, § 524(c)(2)(A) gives the Debtor the right to rescind the agreement any time prior to discharge or within sixty days after the agreement is filed with the Court.[1] No such right is given to creditors.

The case before this Court is unusual in that the creditor, not the debtor, is seeking relief from the reaffirmation agreement. Of the few bankruptcy cases addressing a creditor's challenge to a reaffirmation agreement, most appear to address situations where either the agreement was not signed by the creditor or where the debtor filed an agreement without the knowledge of the creditor. See In re Turner, 156 F.3d 713 (7th Cir.1998). While § 524 does not expressly require the creditor's signature for the creation of a valid reaffirmation agreement, as a matter of practicality one is almost always required. As explained by the Bankruptcy Court in In re Turner, 208 B.R. 434 (Bankr. C.D. Ill. 1997), a creditor's signature serves

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[1]Section 524(c)(2)(A) of the Code states:

> An agreement between a holder of a claim and the debtor, the consideration for which in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if –
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> ****
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> (2)(A) such agreement contains a clear and conspicuous statement which advises the debt the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of recission to the holder of such claim ....

11 U.S.C. § 524(c)(2)(A).

two essential functions necessary in order for the agreement to comply with the provisions of § 524. First, the creditor's signature provides notice to the court and to potential readers of the reaffirmation agreement that the creditor is aware of the agreement. Second, and particularly relevant in this case, the creditor's signature provides "clear and conspicuous proof that there is a binding agreement which both the creditor and the debtor have assented to and to which both agree to be bound." Id. at 436 (emphasis added). In the present case, counsel for the creditor's signature is present, evidencing a binding agreement between the parties. Further, no challenge originating under bankruptcy law has been raised by Horizon. Therefore, as the parties have fully complied with the requirements of 11 U.S.C. § 524, there are no grounds for recission of the reaffirmation agreement under the Bankruptcy Code.

Nor can Horizon receive relief under state contract law. Horizon's vague claim for relief appears to center entirely on its own error in calculating the attorney's fees and costs owed under the mortgage contract. Horizon has made no arguments to this court justifying its claim for the increased fees and costs. A reaffirmation agreement creates a new contract between the debtor and the creditor for the payment of a preexisting debt. Matter of Edwards, 901 F.2d 1383 (7th Cir. 1990). This new contract supercedes any former contract between the parties. Horizon makes no claim of any ground for recission of the new reaffirmation contract, with the possible exception of a claim for unilateral mistake.

In order to rescind a contract based on unilateral mistake, the party seeking rescission must show by clear and convincing evidence that (1) the mistake is of a material nature; (2) that it occurred notwithstanding the exercise of due care by the party seeking recission; (3) that the mistake is of such grave consequences that the enforcement of the contract would be unconscionable; and (4) that the other party to the contract can be placed in status quo by recission. Siegel v. Levy Organization Development Co., Inc., 153 Ill. 2d 534, 607 N.E. 2d 194, 199 (1992); In re Marriage of Agustsson, 223 Ill. App. 3d 510,

585 N.E. 2d 207 (2nd Dist. 1992). In this case, Horizon has placed no facts before this Court justifying a claim for recission based upon unilateral mistake and this Court finds no support in the record for such a claim.

Given the foregoing, the Court finds that the Debtor and Horizon are bound by the reaffirmation agreement as filed with this Court on July 16, 2001. This opinion constitutes this Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

See written Order.

ENTERED: December 4, 2001

/s/ WILLIAM V. ALTENBERGER
UNITED STATES BANKRUPTCY JUDGE